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December 4, 1996

Sam Brown
Commissioner of Crown Lands
Land Information New Zealand
Private Box 170
Wellington

Dear Mr Brown

Access provisions—Waiorau tenure review

Further to our extensive correspondence on this subject over the last two or more years.

I have to record my dismay at successive acts and omissions by your office, your agents, and the Department of Conservation, that have severely weakened the provision of public access to lands retained in Crown ownership on Waiorau as a result of the near-completed pastoral lease tenure review.

Recently Knight Frank NZ Ltd gave me opportunity to comment on the terms of draft access easements. This was a somewhat belated fulfilment of previous undertakings to consult us. PANZ is concerned that these drafts substantially amend decisions made by yourself, to the detriment of public access rights. In regard to the ownership of the Meg Hut, and the terms of various access easements, we would like to know why the following actions and omissions have been made.

Meg Hut
The ownership of this hut, and the underlying land, is planned for freeholding, contrary to decisions that it be transferred to DOC.

The Landcorp submission of 27 September 1993, approved by yourself on 1 March 1994, stated—

> "also the Meg hut will become a DOC hut which makes the southern end of the range very accessible. From the Meg hut it is approximately 1 hour to the tops, and from here the whole range is very accessible."

Further, under 'concerns raised by Mr Lee' the submission restated the intention of hut transfer to DOC—

> "this transfer will be tied to assurances by DOC relating to removal of waste, including the toilets, maintenance of the facility and personal use by the Lee family."

Also the Minister of Lands, in a press statement of 22 March 1994, said "the Meg Hut will come under the control of DOC."

The current intention for freeholding of the hut runs counter to all the above decisions and statements. Public availability of the hut, at fees that are set by a publicly-accountable body such as DOC, is

essential for accessibility of the southern end of the range for cross country skiers and other recreationists.

Road access

The Landcorp submission, approved by yourself on 1 March 1994, stated—

> "a number of groups raised the issue of a road toll for parties who wished only to use the proposed DOC estate. They felt it was unfair that they should pay the full field fee of $20 per person. On previous occasions this issue had been debated at length with the lessee. No solutions had been reached ... however Mr Lee has agreed to move on the road toll issue in order to be seen to be realistic and will therefore charge groups wishing to go directly on to the DOC estate a commercial road toll only. These groups will be allowed to park on the field and move directly through his Nordic ski field on to the DOC estate. This arrangement for public access up the road to the DOC estate will be formalised by a legal easement."
> [PANZ note: road toll only; no provision for parking or other fees]
>
> "In summary the easement will cover the following:
>
> 2 "The access will be available at all times when it is reasonable to have the road open. Road opening is subject to weather and surface conditions.
> [PANZ note: no provision for closing road for 'commercial' reasons]
>
> 3 "Access on the road will be available on payment of a commercial road toll.
> [PANZ note: no provision for parking fees]
>
> 4 "All vehicles on the property are there at vehicle owners risk and the land occupier accepts no liability for damage. Unoccupied vehicles left overnight in the car park must have displayed in the windscreen a card giving the intentions of the occupier(s)."

The Minister's statement of 22 March 1994 stated: "public vehicle access on the private skifield road developed by the Lees has been secured subject to users paying a toll that will go towards maintenance." He went on to state: "where appropriate the negotiators accommodated the public concerns, especially on questions of public access."

However the agreement of 22 August 1994 between the CCL and the Lees deviate from your decision by adding an ability for the Company to close access "for commercial reasons", but confirms that "access will be available on payment of the road toll set for public users of the scenic reserve," without parking or other fees.

In regard to the actual road toll, in your letter to us of 14 October 1994, you confirm our understanding that $10 per vehicle was agreed, by stating: "I have considered carefully the matters you have raised and I am pleased to note your acceptance of the $10 road toll. This arose following considerable negotiation with Mr Lee…"

You go on to state:—

> "car parking on the mountain became an issue after the tenure review was negotiated. Previously a large car park was maintained on the mountain, but this is no longer the case. During the current winter the ski area base has been relocated to improve public safety, and for logistical reasons. Unfortunately there is now limited parking on the mountain.
>
> "As the parking for other than Mr Lee's clients relates to the proposed Conservation estate, Department of Conservation staff are resolving this matter with Mr and Mrs Lee. It would seem appropriate that a reasonable fee be charged for the use of any facilities constructed to meet user demand."

However in our view the relocation of carparking is not a relevant consideration. Mr Lee made his own commercial decision after he signed the agreement—this should be his liability alone. In contrast he has obtained use rights over the DOC land, freehold over the balance of the property, much of which is legally questionable, and ownership of the Meg Hut site, without giving anything in return that could warrant official approval for changing the terms of the agreement.

In a letter dated 4 November 1994 Jeff Connell, DOC stated "in my view, clause 4 of the agreement contemplates a road toll and overnight parking, but no parking fee. The agreement clearly does not require DOC approval of the road toll, and we did not set out to achieve that.

Mr Connell's first point confirms our reading of the agreement. However, the latter point is contrary to what DOC officials told NGOs early on in the tenure review process. We, and others strenuously sought an approval roll for DOC in setting and amending all road tolls; they led us to believe they would negotiate for this, but Jeff Connell's statement means they never did so.

He continued that—

> "we were and are prepared to rely on the preparedness of the Lees to set a fair road toll for users of the scenic reserve in vehicles. The "commercial reasons" that might warrant road closure discussed during the negotiations were early winter vehicle testing and the possibility of the odd closure for commercial filming purposes. I will ask the Lees to confirm this so that we have agreement on what "commercial purposes" means."
> [PANZ note: a definition of 'commercial purposes' has not been included in the terms of the easement]

The road access easement

The text of the draft vehicle access easement differs in several respects from all the foregoing—

- The public, on this and other access easements, will be treated as "invitees". This is unacceptable as it means at the invitation or pleasure of DOC; public rights of access were expected and are essential.

- The easement provides for the setting of 'fees' for (road) and carpark maintenance, rather than a road toll. This is contrary the CCL's approval and the agreement.

- An "initial fee" of $20 per vehicle is double what we understood would be the case, as confirmed by yourself in your letter to us of 14 October 1994.

- There is no provision for DOC involvement in initial toll-setting, or criteria to be used in subsequent mediation.

- There is ability to refuse access when in the Company's discretion "it considers access should be denied either for commercial reasons such as vehicle testing and filming exercises or because of weather surface conditions."

  This is contrary to CCL's approval and does not define the 'commercial' reasons, only gives examples. It could easily be deemed that allowing the public through the area without using and paying for his facilities and services is bad commercial practice and hence reason to deny passage to the DOC area.

- There is a new requirement that in addition to vehicles left overnight in the car park displaying on the windscreen a card showing the intentions of their occupants, that "ticket office staff (be) advised by the occupants that vehicles will be left overnight in the car park.".

This appears superfluous as the requirement to leave an intentions card visible in vehicles. The additional provision requires everyone to front up to the Lees or their staff, with the potential to be harassed—I have reliable reports of this happening last winter, including of people offering road tolls, these being refused, and complaints of trespass being laid with the police.

Conclusion

In addition to establishing public ownership of Meg Hut, PANZ is firmly of the view that all the bulleted points above must be rectified before freehold title is issued to any the lands currently held under Waiorau pastoral lease.

We seek your assurance that no titles will be issued before all the above matters are corrected.

Yours faithfully

Bruce Mason
Researcher and Co Spokesman

cc
Minister of Lands
Minister of Conservation
Jeff Connell, DOC
Ken Taylor, Knight Frank NZ Ltd
Otago Conservation Board
Forest & Bird Southern Office
Federated Mountain Clubs